

Notice of Allowability

Application No.

10/696,633

Examiner

Stacy B Chen

Applicant(s)

HART ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to September 16, 2004.
2. ☒ The allowed claim(s) is/are 61-64.
3. ☒ The drawings filed on 29 October 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>10/29/2003</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

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EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Marlana Titus on October 14, 2004.

The application has been amended as follows:

IN THE SPECIFICATION:

The paragraph on page 1, beginning at line 13, regarding related applications has been replaced with the following paragraph:

--The application is a continuation application of and claims the benefit of priority to U.S. serial number 09/337,946, filed June 22, 1999, now abandoned. By virtue of U.S. serial number 09/337,946, this application also claims priority from prior U.S. provisional application serial number 60/091,403, filed June 29, 1998.--

Page 17, line 31, has been amended by inserting the following paragraph as follows:

--On November 13, 2003, strain VRepEboVP35 was deposited with the American Type Culture Collection (ATCC®), located at 10801 University Boulevard, Manassas, Virginia 20110-2209. VRepEboVP35 has been assigned accession number PTA-5649. The deposit was made under the provisions of the Budapest Treaty, and all restrictions imposed on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent.--

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IN THE CLAIMS:

Claim 61. (Currently amended) The recombinant DNA construct designated VRepEboVP35, having ATCC® accession number PTA-5649.

Claim 62. (Currently amended) The self replicating RNA produced from the construct of claim 61.

Claim 63. (Currently amended) Infectious alphavirus particles comprising the self replicating RNA of claim 62.

Claim 64. (Currently amended) A method for producing Ebola virus proteins comprising culturing cells transformed with the DNA construct of claim 61, under conditions such that at least one DNA fragment encoding Ebola proteins is expressed and Ebola proteins are produced.

Examiner's Comment

2. The specification was amended to include the deposit information regarding the DNA construct, VRepEboVP35. The specification was also amended to update and correct the priority claim. USSN 09/337,946 is now abandoned, and USSN 60/091,403 was filed June 29, 1998, not June 19, 1998, as indicated in the preliminary amendment filed October 29, 2003.

Claim 61 was amended to include the ATCC® deposit information of the construct, VRepEboVP35. (VRepEboVP35 is Venezuelan equine encephalitis Replicon Ebola Virion structural Protein 35.) Claim 62 was amended to simplify claim language. For clarification, the RNA of claim 62 is the full-length transcription product of the construct of claim 61. Claim 63

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was amended to simplify claim language. Claim 64 was amended to simplify the claim language and remove language (“the cells” and “the said at least one DNA fragment”) that lacked antecedent basis in preceding claims.

Reasons for Allowance

3. The following is an examiner’s statement of reasons for allowance:

In response to the restriction requirement of June 15, 2004, Applicant telephoned the examiner to explain the application history and the amendment that was filed subsequent to the phone conversation. The amendment, filed September 16, 2004, cancelled all pending claims and added new claims 61-64, drawn to subject matter previously deemed allowable in the parent application, USSN 09/337,946, now abandoned. The parent application was abandoned because there was no deposit information available for the claimed DNA construct, VRepEboVP35. However, as of the response filed September 16, 2004 in the present application, deposit information for the DNA construct VRepEboVP35 is available. The DNA construct VRepEboVP35 is free of the prior art and is therefore allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Conclusion

4. Claims 61-64 as amended are allowable.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stacy B. Chen whose telephone number is 571-272-0896. The examiner can normally be reached on M-F (7:00-4:30). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James C. Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Stacy B. Chen
October 15, 2004



JAMES HOUSEL 10/15/04
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

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Pending claims with examiner's amendment of 10/15/2004:

Claim 61. (Currently amended) The recombinant DNA construct designated VRepEboVP35, having ATCC® accession number PTA-5649.

Claim 62. (Currently amended) The self replicating RNA produced from the construct of claim 61.

Claim 63. (Currently amended) Infectious alphavirus particles comprising the self replicating RNA of claim 62.

Claim 64. (Currently amended) A method for producing Ebola virus proteins comprising culturing cells transformed with the DNA construct of claim 61, under conditions such that at least one DNA fragment encoding Ebola proteins is expressed and Ebola proteins are produced.